

Guidance for the Irish licensed trade

**Public Health (Tobacco) Acts
2002 and 2004**

Section 47 - Smoking Prohibitions

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Background

An independent scientific report commissioned by the Office of Tobacco Control and the Health and Safety Authority, "The Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace", 2003, concluded that exposure to ETS causes lung cancer, heart disease and respiratory problems. The report particularly notes that bar staff and other hospitality workers are a unique risk group in that their workplaces constitute extreme ETS exposure settings.

Subsequently, a prohibition on smoking in enclosed workplaces, including licensed premises, was introduced under Section 47 of the Public Health (Tobacco) Acts, 2002 and 2004. This legislation is enforced by officers authorised by the chief executive officers of the Office of Tobacco Control and the health boards under Section 48 of the Acts.

This document is one of a series intended to inform employers/managers of their obligations in respect of Section 47 of the Public Health (Tobacco) Acts. The hospitality sector had expressed particular concerns about the difficulties in introducing smoke-free bars. In response to these concerns the Office of Tobacco Control in conjunction with the relevant representative bodies agreed to develop specific guidance for this part of the hospitality sector to facilitate compliance with the smoking ban.

This publication seeks to provide guidance to occupiers, managers and other persons involved in the licensed trade including; bars, restaurants and nightclubs, on how they may seek to comply with their legal obligations under

Section 47 of the Public Health (Tobacco) Acts, and is without prejudice to any other legal obligations under criminal or civil law. Nothing in these Acts obliges an employer or manager to permit smoking or to provide a smoking area.

The introduction of the workplace smoking ban will assist employers/managers in meeting their pre-existing common law duty of care, together with their statutory responsibility, to provide a reasonably safe working environment.

The exemption of a place or premises from the ban does not absolve the employer/manager of these responsibilities. Employers and managers with responsibility for places or premises that are exempted from the workplace smoking ban are advised to review their policies with a view to eliminating exposure where possible but at least to minimise exposure to ETS. Any smoking in exempted places or premises should be located such that smoke from these areas cannot enter the enclosed workplace and should ensure that employee exposure is minimised.

The experience of employers in implementing smoke-free policies in other settings has demonstrated the value of having a written smoke-free policy as part of the change management process. Protection of third parties and compliance with legal obligations are the basis for such policies. Successful implementation of smoke-free policies requires good communications with employees, thoughtful consultation, sufficient time for change and understanding towards smokers.

Public Health Tobacco Acts 2002 and 2004

Section 47 - Smoking Prohibitions

1. Aim

This publication provides occupiers, managers and other persons involved in the licensed trade including; bars, restaurants and nightclubs, with guidance on how they may endeavour to comply with their obligations arising from Section 47 of the Public Health (Tobacco) Acts, 2002 and 2004 that prohibits smoking in the workplace.

In addition, occupiers, managers and any other persons in charge of licensed premises including bars, restaurants and nightclubs are encouraged to contact the enforcement agencies i.e. the health boards (environmental health service) and the Office of Tobacco Control for advice and/or assistance concerning the application of this law.

2. Relevant Legislation

Section 47(1) of the Public Health (Tobacco) Acts 2002 and 2004 prohibits the smoking of a tobacco product in a specified place. The term 'specified place' is defined as including licensed premises and registered clubs in so far as they are places of work.

Under Section 47(2) of the Acts, a person who smokes in contravention of subsection (1) of that section is guilty of an offence.

Under Section 47(3) of the Acts, where a person smokes in contravention of subsection (1) of that section, the occupier, manager or any other person for the time being in charge of the place where the contravention occurs shall each be guilty of an offence.

Section 47(4) of the Acts establishes a defence for a person against whom proceedings are brought under Section 47(3), provided that they

can demonstrate that they have made all reasonable efforts to ensure compliance with Section 47.

Section 47(7) of the Acts details exempted premises/places. These include dwellings, hotel bedrooms and places or premises, or parts of a place or premises, wholly uncovered by any roof whether fixed or moveable, or certain outdoor parts of a place or premises covered by a fixed or movable roof, provided that not more than 50 per cent of the perimeter of that part is surrounded by one or more walls or similar structures (inclusive of windows, doors, gates or other means of access to or egress from that part).

Under Section 5(2A) of the Acts a person found guilty of an offence under Section 47 is liable on summary conviction to a fine of up to €3,000.

3. Scope

This document seeks to provide guidance on practical steps that can be taken by the occupier, manager or other person in charge of a licensed premises where smoking is prohibited by Section 47(1) in endeavouring to

make 'all reasonable efforts' under Sections 47(3) and 47(4) of the Acts, and is without prejudice to any other legal obligations under criminal or civil law.

Public Health Tobacco Acts 2002 and 2004

Section 47 - Smoking Prohibitions

4. Compliance / Enforcement

Occupiers, managers and any other persons in charge of licensed premises should make all reasonable efforts to ensure their staff and patrons are aware of the prohibition on smoking in order to facilitate compliance with the law.

Employers and managers should make all reasonable efforts to ensure that employees, customers and other visitors to their premises (e.g. sub-contractors) do not smoke in contravention of the law.

Occupiers, managers and any other persons in charge of licensed premises who observe or are made aware of a person smoking in contravention of the law should make all reasonable efforts to ensure that the contravention ceases and is not repeated.

The following are the recommended minimum reasonable efforts required:

- a) Developing and implementing a smoke-free policy (see section 5 below);
- b) Displaying the required “No Smoking” signs (see section 6 below);
- c) Removing all ashtrays and other like receptacles; and providing external stubbing bins at entrances where appropriate;
- d) Informing a person smoking in a bar, restaurant or night-club that he/she is committing an offence;
- e) Refusing service to individuals who are smoking in violation of the law;
- f) Requesting any person smoking in the premises to extinguish the smoking material or to leave.

5. Smoke-free Policy

Occupiers, managers and any other persons in charge of a licensed premises should together establish and implement a written policy and procedures to ensure compliance with the provisions of Section 47 as they are each potentially liable under Section 47(3) of the Public Health (Tobacco) Acts, 2002 and 2004.

The policy should clearly identify which members of management/staff have responsibility for its implementation and

procedures to be followed in the event of non-compliance. The policy should contain a statement advising all employees of their right to work in a smoke-free environment and information, if necessary, on how to obtain help quitting smoking. This policy and associated procedures must be communicated to all staff and in particular to new and part-time staff before they commence employment. (A model smoke-free policy is shown on page 5).

6. Signage

Every bar, restaurant and nightclub should have “No Smoking” signs conspicuously displayed so that the signs are clearly visible to all employees, customers and visitors while in the premises. All such signs should include the name of the person (owner/manager) to whom a complaint should be made in the event of non-compliance.

A “No smoking” sign should be permanently displayed in a conspicuous position at each entrance to the premises, at service counters, in toilet facilities and staff rooms. “No Smoking” signs should contain the international “No Smoking” symbol and be durable. (A model “No smoking” sign is shown on page 7).

Model Smoke-Free Workplace Policy for the Irish Licensed Trade

Purpose

Exposure to second-hand smoke/Environmental Tobacco Smoke (ETS) also known as passive smoking is a cause of disease, including lung cancer and heart disease, in third parties. Neither the simple separation of smokers and non-smokers within the same airspace nor the provision of ventilation can eliminate exposure

to ETS and the consequent health effects of such exposure. This policy has been developed to protect all employees, service users, customers and visitors from exposure to ETS, to ensure compliance with legal obligations and to ensure a safe working environment.

Policy

It is the policy of [INSERT NAME OF BUSINESS] that all of its workplaces are smoke-free and that all employees have a right to work in a smoke-free environment.

Smoking is prohibited throughout the entire workplace with no exceptions. This policy applies to all employees, consultants, contractors, customers and visitors.

Implementation

Overall responsibility for policy implementation rests with the occupier, manager or other person for the time being in charge of the workplace. All staff have an obligation to adhere to, and facilitate the implementation of this policy.

The person in charge shall inform all existing employees, consultants and contractors of the policy and their role in the implementation and monitoring of the policy. All new and prospective employees, consultants and contractors shall be given a copy of the policy on recruitment/induction by the person in charge.

Policy Infringements

Infringements by staff will be dealt with under local disciplinary procedures. Infringements by customers, clients etc., will be dealt with in accordance with the procedure set out overleaf.

Staff and customers who contravene legislation prohibiting smoking in the workplace are also liable to criminal prosecution with an associated fine.

Smoking Cessation

Information on how to obtain help quitting smoking is available from [.....] e.g. The National Smokers Quitline (1850 201 203) or the Health Promotion Service of the local health board.

Procedure for staff if a customer smokes in contravention of the law prohibiting smoking in the workplace

1. Draw the customer's attention to the "No Smoking" signs and advise that they are committing an offence by smoking on the premises.
2. Advise the customer that it is also an offence for the occupier, manager and any other person for the time being in charge of the premises to permit anyone to smoke in contravention of the law.
3. Advise the customer that the business has a smoke-free policy to ensure a safe working environment for staff and customers, and that under the policy staff are obliged to refuse service to customers who persist in smoking.
4. If the customer continues to smoke you are entitled to refuse service and should immediately request that they leave the premises.
5. If the customer refuses, implement normal procedure for anti-social/illegal behaviour in the premises.
6. Maintain an appropriate record of all such incidents and notify all staff of action taken.
7. In all cases where physical violence is threatened or encountered, notify and/or seek the assistance of the Gardaí.

Model “No Smoking” Sign

No Smoking

It is illegal to smoke in these premises



Proprietor:

**Please notify
complaints to:**

Maximum Fine €3000 – Public Health (Tobacco) Acts



Notes

www.smokefreeatwork.ie
provides information on
smoke-free workplaces



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